IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 282 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TAMAL PURNENDY ROY

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 282 of 2004

NANAVATY ADVOCATES for Petitioner No. 1-3

Mr. P.R.Abichandani, APP for Respondent No. 1

MR DHARMESH V SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 01/10/2004

ORAL JUDGEMENT

1. The present application has been preferred

against the order passed by the Additional Sessions Judge, Surat, in Criminal Misc. Application no.1188 of 2003 dated 27th February, 2004.

2. The learned Counsel appearing for the applicants submitted that the present applicants have not committed any offence as alleged by the prosecution. The Sessions Court had granted bail to the present applicants vide order dated 4th March, 2003 in Criminal Misc. Applications nos.216 0f 2003 and 372 of 2003. In the said order, the learned Additional Sessions Judge, Surat, has also observed that the accused have given voluntarily an undertaking for payment of the amounts as referred to in paragraph 8 of the said order (page 95 of the compilation of the present Revision Application). The applicants had filed affidavit before the trial Court wherein they had undertaken to make the payment of money and a time table for payment was also given. It was also categorically mentioned in the said order passed by the learned Additional Sessions Judge, Surat, that as the accused have voluntarily given a time table for payment of the outstanding amount of Suryapur Co-operative Bank, Surat,, the said voluntary statement was interwoven as a condition of the bail, and it was also referred that, if there shall be any breach of the conditions of the oral undertaking given by the accused, the bail granted shall be cancelled and the accused will be liable for rearrest. In detail, this aspect of the matter has been incorporated in the order passed by the learned Additional Sessions Judge, Surat. As per the said order, 33% of the total outstanding amount was to be paid on or before 31st March, 2003. another 33% was to be paid in the month of April, 2003 and the last part.that is, the remaining amount of 34% was to be paid in May, 2003. No amount was paid in the month of March and similarly, the month of April was also without any payment. In the month of May, 2003 instead of completing the payment of the whole amount of Rs.60 Lakhs, Rs.3.5 lakhs were paid, and therefore, obviously, an application for extension of time for payment was preferred by the present applicants bearing Criminal Misc. Application no.3004/2003 before the Sessions Court at Surat, which was rejected by the Sessions Court by order dated 17th April, 2003. Again, the present applicants moved an application before this Honourable Court vide Criminal Misc. Application no.3004 of 2003 for getting extension of the time table of the payment of the outstanding amount which the applicants had given voluntarily before the Sessions Court at Surat, and had obtained bail alongwith one of the conditions of payment of the money. The time for the payment though had been voluntarily accepted by the applicants but could

not be fulfilled was graciously extended by this Court vide order dated 7th May, 2003. The period for payment was extended upto July, 2003. The learned Counsel appearing for the applicant submitted that still there was non payment of the amount even during the extended period, and hence, cancellation of bail application was preferred by the State bearing Criminal Misc. Application no.1188/2003 under Section 439(2) of the Code of Criminal Procedure before the Sessions Court at Surat, and the learned Additional Sessions Judge, Surat, had cancelled the bail vide order dated 27th February, 2004 produced at Annexure "F" to the memo of the present application which is under challenge in this Criminal Misc.Application.

3. The learned Counsel appearing for the applicant submitted that every case of non-payment may not mathematically be converted into cancellation of bail already granted by the trial Court. Non- payment may be due to several reasons. Even today, the present applicants are ready and willing to permit the opponent no.2-bank to sell the properties which are already mortgaged, and hence, once the bail is granted by the trial Court vide orders in the month of February and March, 2003 the same ought not to have been cancelled vide order dated 27th February, 2004. Still, the promise is in the mouth of the present applicants that the payment shall be made and on the words of the applicants, the bail ought not to have been cancelled.

4. Upon issuance of notice, the learned Counsel appearing for the bank as well as the Additional P.P. submitted that the case of the present applicants is altogether different from the matters of ordinary non-payment of amounts. Looking to the manner and method in which the offence have been committed by the present applicants alongwith the other co-accused as referred in FIR, the present case is not a simple case of nonpayment of money. There is a direct involvement of the present applicants in the commission of the offences, nonetheless, while deciding the bail application preferred by the present applicants before the trial Court, it was voluntarily accepted by the present accused applicants to make payment of the outstanding amount to the bank. Undertakings were filed by the applicants on affidavit whereby the time table was given by the present applicants to the Court. The Court was satisfied by the undertaking given by the present applicants as to the payment of the amount. It is submitted by the learned Counsel appearing for the respondents, including A.P.P. that promise given by the applicants was not a promise to

the bank, but it was an undertaking given to the Court which was interwoven as a condition of the bail by the Sessions Court at Surat, while granting bail to the present applicants in Criminal Misc. Application no.216 of 2003 as well as in Criminal Misc. Application no.215 of 2003 (Anticipatory bail application by applicant no.3) and Criminal Misc.Application no.372 of 2003 (Regular bail application by applicant no.3) by orders dated 4-3-2003, 7-3-2003 and 26-3-2003 respectively. Thereafter, the conditions were not fulfilled as the payment was not made as assured by the present applicants and instead of 33% of the payment in the month of March,2003 and another 33% in the month of April 2003, no amount was paid but towards the last 34% of the total outstanding to be paid in the month of May, 2003, only 3.5 lakhs were paid, and therefore, extension of time was sought for by the applicants which was rejected by the Sessions Court at Surat, and the further application was preferred before this Court, and this Court vide order dated 7th May, 2003 extended the time for the payment of the amount as assured by the present applicants upto July, 2003. It is highlighted by the learned Counsel appearing for the respondents that the present applicants had assured this Honourable Court also about the payment of the amount as referred in the order in Criminal Misc. Application no.3004/2003 dated 7th May, 2003, and therefore, for the second time assurance given by the present applicants was again interwoven as a condition of the bail and as per the desire of the present applicants, the condition was modified by this Court vide order dated 7th May, 2003. It is submitted by the learned Additional P.P. that, in fact, there was no intention on the part of the present applicants to fulfil these undertakings and conditions of bail from the very beginning. Originally, the orders of bail were passed in the month of March, 2003 by the Sessions Court at Surat giving time table for payment of the first one-third in March, 2003, the second one-third in April, 2003 and the last one third in May, 2003, but from the very beginning after getting bail from the Sessions Court at Surat, it was an intention on the part of the present applicants not to fulfil the conditions of bail. From the very first month of March, 2003, the breaches to conditions have started and it continued despite the order dated 7th May, 2003 passed by the High Court of Gujarat in Criminal Misc. Application no.3004 of 2003. Even though the time is extended as desired by the applicants, the present applicants have committed breach of the conditions of bail, and therefore, rightly, correctly and in consonance with the facts and law, the bail granted by the trial Court has been cancelled by the Additional Sessions

Judge, Surat vide order dated 27th February, 2004 in Criminal Misc. Application no.1188/2003, and therefore, there is no substance in the present revision application, and the same may kindly be not entertained by this Court. It is also submitted by the learned Additional P.P. for the State that after the order passed by the learned Additional Sessions Judge, Surat cancelling the bail dated 27th February, 2004, the present applicants are absconding and not available to the police.

5. I have perused the papers, heard the learned Counsel and their contentions and have gone through the various orders passed by the trial Court and this Court. Looking to the facts and circumstances of the case and the manner and method in which the breach of condition has been committed by the present applicants, the order passed by the Additional Sessions Judge, Surat in Criminal Misc. Application no.1188 of 2003 dated 27th February, 2004 is true and correct mainly for the following reasons:

(i) The present applicants when preferred the bail application bearing Misc. Criminal Application no.216, 215 and 372 all of 2003 before the Sessions Court at Surat, an undertaking was given by the present applicants to the Court for the payment of the amount to the Suryapur Co-operative Bank. A detailed time table was also given by them, and therefore, the same was interwoven as a condition of the bail. It was also referred by the trial Court while granting bail that if there will be any breach of the conditions or of the oral voluntary undertaking given by the present applicants, the bail shall be liable to be cancelled. These orders were passed in the month of March and April, 2003 in respect of the present applicants. The present applicants had not preferred any application before this Court against these orders. In fact the present applicants were satisfied by the orders passed by the Additional Sessions Judge, Surat, though they were conditional bail orders. In short, the conditions in the bail order passed in the month of March, 2003 were accepted by the present applicants. No grievances were ever

ventilated by the present applicants before any Court or Courts that the conditions upon which the bails were granted were unreasonably excessive. On the contrary the benefit of the said orders were taken by the present applicants.

(ii) The present applicants after accepting the orders of bail granted by the Addional Sessions Judge, Surat, in the month of March, 2003 moved an application for extension of time to make the payment of the outstanding amount. This application also tantamounts to the acceptance of the conditional bail order. The time as prayed for initially was not extended by the Sessions Court at Surat, but subsequently it was extended by this Court vide order dated 7th May, 2003 and again in an order dated 7th May, 2003 this Court continued the time table for payment as condition of the bail. This order was also never challenged by the present applicants before any Court or Courts, meaning thereby, conditions of bail were accepted even before this Court by the present applicants which is manifestly clear by order dated 7th May, 2003 passed by this Court in Criminal Misc. Application no.3004 of 2003.

(iii) As there was breach of condition, cancellation of bail application was preferred by the State under Section 439(2) of the Criminal Procedure Code being Misc. Criminal Application no..1188/2003 before the Sessions Court at Surat. Immediately after taking bail in the month of March, 2003, the breaches of non payment have also started from the very same month i.e. March, 2003 onwards. This speaks volumes about the behaviour of the present applicants accepting conditional order of bail as well as after getting extension of time for the payment of the money from this Court, the continuous action of the present applicants of not making the payment of the amount tantamounts to a clear, deliberate, pre-planned and well

designed action amounting to breach of the conditions of bail. Cheques given by the applicants have been dishonoured as per para 7 of the impugned judgement.

(iv) Conditions of bail were never imposed just for the sake of reading only, they were part and parcel of the bail order itself. The conditions were to be fulfilled. Every breach of condition may lead to the cancellation of bail. As narrated hereinabove, the manner and method in which the breach of the conditions have been committed by the present applicant i.e. immediately after taking the bail order, tantamounts to a deliberate and pre-planned, well designed action on the part of the present applicants so as to get the benefit of enlargement on bail but not to fulfil the conditions, and therefore, rightly and correctly the order has been passed by the Additional Sessions Judge, Surat cancelling the bail vide order dated 27th February, 2004.

(v) The learned Counsel appearing for the applicants have submitted that mere nonpayment of the outstanding amount may not lead to cancellation of bail. This argument is not accepted because immediately after getting the bail in the month of March, 2003, the breaches of the conditions have been started. Even after accepting the extension of time from this Court again the breach has been committed.

(vi) After passing the order by the learned Additional Sessions Judge, Surat in February, 2004, even in the month of October, 2004, the present applicants are absconding and not available to the police as submitted by the Additional P.P. of the State.

6. Suffice it to say, at the bail stage, that this is not a simple case of non payment of the amount but a case of deliberate breach of conditions, and hence, the order passed by the Additional Sessions Judge dated 27th February, 2004 being true and correct, there is no

substance in the present application, and the same is rejected. Notice discharged.

(D.N.Patel,,J.)

stanley-ak.